

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

In Re:

**Tony Jupiter**

Case No. 05-82598

Chapter 13

Social Security No. xxx-xx-4352

Address: 4803 Barbee Road, Durham, NC 27713-

Debtor

**MOTION TO MODIFY PLAN**

**NOW COMES the Debtor**, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on September 6, 2005, with the Chapter 13 plan being subsequently confirmed on November 21, 2005.
2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:  
  
From: \$2,720.00 per month for: (1) A total of 36 payments, or (2) Until such time as the Debtor has paid to the Chapter 13 Trustee sufficient funds to provide the unsecured creditors (who have valid filed claims) a dividend of 25%, whichever period of time is longer.  
  
To: \$2,720.00 per month through March, 2008, followed thereafter by \$2,210.00 per month, starting the month of the entry of an Order modifying this plan, for: (1) A total of 36 payments, or (2) Until such time as the Debtor has paid to the Chapter 13 Trustee sufficient funds to provide the unsecured creditors (who have valid filed claims) a dividend of 25%, whichever period of time is longer.
3. In addition, the Debtor requests a "waiver" to move his Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. The Debtor agrees that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
  - a. On August 5, 2008 the Chapter 13 Trustee's Motion to Modify Plan was granted increasing the Debtor's monthly plan payment to \$ 2,720.00 to accommodate an apparent increase in the ongoing long term debt owed to Countrywide Home Loans.

However as that motion was pending, Countrywide forwarded the Debtor a notice that they were temporarily locking his interest rate at the original low amount and thereby negating any increase in monthly payments. Said notice is attached and incorporated for reference.

With the reduction in monthly mortgage payments, the increase brought about by the Trustee's motion is no longer necessary. The proposed modification seeks to return payments to the amount the Debtor can afford as outlined by his Chapter 13 budget.

5. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes:
  - a. Change in length of plan.
  - b. Filed claims different from schedules.
  - c. Correction of monthly mortgage amount.

#### **Appended Application for an Additional Attorney Fee**

6. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify, including, without limitation, the following:
  - a. Calls from and to the Debtor to discuss changes in his situation which necessitate this motion, to explain the procedures and requirements involved, and to advise the Debtor accordingly; and
  - b. Contact with the Trustee's office concerning the proposed modification; and
  - c. Re-evaluating and recalculating the Chapter 13 plan in this case; and
  - d. Drafting this Motion and Certificate of Service; and
  - e. Service of the Motion on all interested parties, which includes all creditors scheduled in this case, at the expense of the undersigned law firm; and
  - f. Filing of the Motion; and
  - g. Prospective attendance with Debtor at the hearing upon the motion, if any; and
  - h. Prospective drafting and filing of the proposed Order and Deputy Clerk's Certificate of Service; and
  - i. Prospective follow-up instructions to client, as will be necessary, following the granting of this motion.

These services were not taken into account in the contract for legal services entered into between the undersigned and the Debtor.

WHEREFORE, the Debtor prays that this Court grant his Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$250.00 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: October 1, 2008

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s John T. Orcutt

John T. Orcutt

North Carolina State Bar No.: 10212

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

jupitertonyMTM.wpd (rev. May 23, 2006)

**HOME LOANS**

Mail Stop, RLS-4-32  
2270 Lakeside Blvd.  
Richardson, TX 75082

0001228-0002485 SIMTS 001 1----- 661018

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**Notice Date:** July 10, 2008**Account No.:** 90110175**Property Address:**  
4803 Barbee Rd  
Durham, Nc 27713

TONY JUPITER  
4803 BARBEE RD  
DURHAM, NC 27713

**IMPORTANT MESSAGE ABOUT YOUR LOAN**

**We have GREAT NEWS about your home loan!**

***Please read this letter carefully and keep a copy for your records. It reflects a beneficial change to the terms of your mortgage loan.***

To help you better manage the impact of the recent increase in your monthly payment and current market conditions, we are temporarily reducing the interest rate on your loan back to the introductory interest rate provided to you at the origination of your loan. This new lower interest rate will be effective for 5 years.

**WHAT THIS MEANS**

The other terms and conditions of your Note and Addendums remain unchanged and in effect. In order to understand how we have calculated your new monthly payment, please read the section below entitled, "How we calculate your new monthly payment." If you have an escrow account, this notice does not affect your escrow payment. Please refer to your monthly statement for information regarding your current escrow payment.

Your new reduced interest rate will be effective as of July 13, 2008, and it will remain in effect until August 12, 2013. As a result, your August 13, 2008 payment will be \$496.99. Your loan will convert back to an adjustable rate pursuant to the terms of your loan documents at the conclusion of the 5 year fixed rate period.

### CERTIFICATE OF SERVICE

I, Will Gibbs, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on October 1, 2008, I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, addressed to the following parties:

Richard M. Hutson, II  
Chapter 13 Trustee

Michael West  
U.S. Bankruptcy Administrator

and by regular first-class U.S. mail, addressed to the following parties:

Tony Jupiter  
4803 Barbee Road  
Durham, NC 27713-

All creditors listed on the attached Mailing Matrix at the addresses listed thereon.

/s Will Gibbs  
Will Gibbs

Tony Jupiter  
4803 Barbee Road  
Durham, NC 27713-

Durham City/County Tax Office  
**Attn: Managing Agent**  
Post Office Box 3397  
Durham, NC 27702-3397

Capital One Bank  
**Attn: Managing Agent**  
c/o Tsys Debt Management  
Post Office Box 5155  
Norcross, GA 30091-5155

South Verizon Wireless  
**Attn: Managing Agent**  
AFNI/Verizon Wireless  
404 Brock Drive  
Bloomington, IL 61701-

Wachovia Bank NA  
**Attn: Managing Agent**  
Central Bankruptcy Department VA 7359  
Post Office Box 13765  
Roanoke, VA 24037-3765

American General Finance  
**Attn: Managing Agent**  
4015 University Drive Suite J  
Durham, NC 27707-2548

American Express Bank FSB  
**Attn: Managing Agent**  
c/o Becket & Lee LLP  
Post Office Box 3001  
Malvern, PA 19355-0701

Ecast Settlement Corporation  
**Attn: Managing Agent**  
Post Office Box 35480  
Newark, NJ 07193-5480

HSBC Mortgage Services  
**Attn: Managing Agent**  
Post Office Box 21188  
Eagan, MN 55121-4201

Durham County Register of Deed  
**Attn: Managing Agent**  
County Judicial Building  
Durham, NC 27702-

Vision Financial Federal Credit Union  
**Attn: Managing Agent**  
Post Office Box 15818  
Durham, NC 27704-5819

Ecast Settlement Corporation  
**Attn: Managing Agent**  
Post Office Box 7247-6971  
Philadelphia, PA 19170-6971

Rebate Cash Advance  
**Attn: Managing Agent**  
3270 Folkways Boulevard  
Suite 200  
Lincoln, NE 68504-

Wells Fargo Bank NA  
**Attn: Managing Agent**  
MAC #X2302-04C  
One Home Campus  
Des Moines, IA 50328-

Mortgage Electronic Reg System  
**Attn: Managing Agent**  
c/o Countrywide Home Loans  
7105 Corporate Drive PTX C 35  
Plano, TX 75024-